

2013 NOV 20 AM 9:42 BEFORE THE FEDERAL ELECTION COMMISSION

2013 NOV 20 AM 9:33

In the Matter of)

CELA

MUR 6567)

Bruce Peller)

Bruce Peller for Congress and)

Paula Andrea Henao as treasurer)

DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has determined that MUR 6567 should not be referred to the Alternative Dispute Resolution Office. Also, for the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6567.¹

¹ The EPS rating information is as follows:
Filed: June 22, 2012.

1 In this matter, the Complainant, John K. Motsinger, Sr., asserts that as of April 20, 2012,
2 Bruce Peller, Bruce Peller for Congress (the "Committee")² and Paula Andrea Henao in her
3 official capacity as treasurer, had failed to file a quarterly campaign report due on April 15,
4 2012, a statement of the Committee's organization, and a statement of Peller's candidacy, as
5 required by the Act and underlying Commission regulations. Compl. at 1-2. The Complainant
6 alleges that, as of the date of Complaint, Bruce Peller was a federal candidate because the
7 Committee had made expenditures over \$5,000. Moreover, the Complainant asserts that Peller
8 was not "testing the waters" because he filed with the North Carolina State Board of Elections as
9 a candidate, formally announced his candidacy, and otherwise held himself out as a candidate.³
10 See 11 C.F.R. §§ 100.72(b), 100.131(b). *Id.* at 1-2. Additionally, the Committee allegedly
11 received contributions over \$5,000 and failed to include a proper disclaimer on its yard signs. *Id.*

12 Treasurer Henao acknowledges that the 2012 April Quarterly report was past due but that
13 the Committee only discovered this fact on April 18, 2012. Resp. at 1. The Committee
14 "compiled and mailed [the report] the next day."⁴ *Id.* Henao explains that Christopher Church
15 was the Committee's treasurer prior to April 18, 2012 and that Church advised the Committee
16 that it "[was] in compliance and that no reports were past due." *Id.* Henao further responds that
17 Church was fired for "writing unauthorized checks from the campaign checking account" and
18 "transferring money . . . to his personal banking account." *Id.* The incident was reported to the

² Peller was a candidate in North Carolina's fifth congressional district. The Committee was Peller's principal campaign committee.

³ Specifically, the Committee had an experienced campaign manager, a "professional [campaign] website," it distributed "professional grade campaign literature and materials," and had yard signs. Compl. at 1.

⁴ The Committee's Statement of Organization and 2012 April Quarterly Report, and Heller's Statement of Candidacy, were received by the FEC on April 24, 2012.

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1 Winston-Salem Police Department.⁵ *Id.* Henao also notes that the Committee's subsequent
2 reports had been timely and accurately filed. *Id.* Henao did not respond to the allegation that the
3 Committee's yard signs lacked an appropriate disclaimer.

4 An individual becomes a candidate for federal office when he or she has received
5 contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2); *see also* 11 C.F.R.
6 § 100.3. The Committee reported over \$5,000 in contributions and expenditures on its April
7 quarterly report. *See* April 2012 Quarterly Report of Receipts and Disbursements (Apr. 24,
8 2012). Peller, thus, was a candidate as of April 15, 2012.

9 In reviewing the circumstances surrounding the delayed reporting, we note that the
10 Committee appears to have been misled by its former treasurer, and that the Committee took
11 prompt remedial action upon discovering that it was not in compliance with the Commission's
12 filing requirements. Indeed, the Committee filed its statement of organization and its April
13 quarterly report on April 24, 2012—only nine days after the due date. Peller also filed his
14 statement of candidacy on April 24, 2012. The alleged failure to file reports, thus, was promptly
15 corrected. Furthermore, the allegation regarding yard signs did not provide any specific
16 information about a possible disclaimer violation. Therefore, in furtherance of the Commission's
17 priorities, relative to other matters pending on the Enforcement docket, the Office of General
18 Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss

⁵ This Office has repeatedly requested additional information from the Committee concerning the alleged embezzlement from its former treasurer. To date, the Committee has not responded nor has it filed a complaint with the Commission regarding the embezzlement. We note that on May 2, 2012, the Winston-Salem Journal's website posted an article on the alleged embezzlement by Church and subsequent police report by Peller, which reflected the amount at issue in the embezzlement to be \$5,620. John Hinton, *Political consultant denies wrongdoing as police investigate*, WINSTON-SALEM JOURNAL, May 2, 2012, http://www.journalnow.com/news/elections/local/article_c83eb207-f7d1-57da-a69e-040227f3821e.html

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1 this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), approve the attached Factual &
2 Legal Analysis and the appropriate letters, and close the file.


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4 **RECOMMENDATIONS**

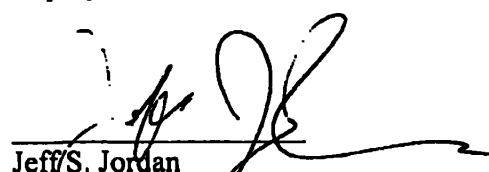
- 5 1. Dismiss MUR 6567, pursuant to the Commission's prosecutorial discretion;
6
7 2. Approve the attached Factual & Legal Analysis and the appropriate letters; and
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9 3. Close the file.


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13 General Counsel

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17 11/20/13
18 Date

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22 BY:

23 
24 Gregory R. Baker
25 Deputy General Counsel

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27 Jeff S. Jordan
28 Supervisory Attorney
29 Complaints Examination
30 & Legal Administration

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